

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

DERRICK GIBSON
MSGT, U.S. ARMY,

and

STEVEN BROWN
SSG, U.S. ARMY, *et al*, for themselves
and all others similarly situated

Plaintiffs

v.

LLOYD AUSTIN
Secretary of Defense,
U.S. DEPARTMENT OF DEFENSE
Washington, D.C. 20301

and

JANET WOODCOCK,
Acting Commissioner,
U.S. FOOD AND DRUG
ADMINISTRATION

and

XAVIER BECERRA
Secretary of the U.S. Department of
Health and Human Services
U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES

Defendants

Civil Action No. _____

Declaration of Steven Brown, U.S. Army

I, Staff Sergeant (SSG) Steven Brown, do hereby declare as follows:

1. I am over the age of 18 years, have personal knowledge of the matters set forth in this Declaration, and if called upon to testify to them, I would and could do so competently.

2. I am a 35P Cryptologic Linguist in the United States Army currently serving in the 173rd Infantry Brigade Combat Team (Airborne) at Caserma Del Din, Vicenza, Italy.

3. I enlisted in the Army in June 2013 and graduated from the Defense Language Institute (DLI) twice, once for Levantine Arabic in 2015 and once for Russian in 2019, subsequently earning an Associates of Arts degree in both languages. After graduating the Levantine Arabic course, I served as a Special Operations Team – Alpha (SOT-A) Team Member from 2016 – 2018. During this time, I deployed once to Africa where I served in an E-7 billeted position leading a SOT-A Team in support of an Operational Detachment Alpha (ODA) in a combat environment. In the rear, I relentlessly sought ways for self and organizational improvement, sharing any knowledge and experience I gained by developing Standard Operating Procedures (SOP) and training pipelines, recording After Action Reviews (AAR), and conducting training for subordinates, peers, and senior personnel. I was chosen over senior personnel because of my ability to operate and unlock equipment capabilities, develop relationships across intelligence disciplines and service branches, and mentor my peers for others to do the same.

4. After my first enlistment contract, I returned to the DLI for the Russian program, graduating with Deans List and a 3.7 GPA. Prior to departing for my next duty station, I also graduated from Full University Online with an Associates of Science in Web Design & Development with a 4.0 GPA and Salutatorian status. I arrived in United States Army Garrison (USAG) Italy in October 2019 and have served as both a Signals Intelligence (SIGINT) Collection Team (SCT) Team Leader, and the SCT Squad Leader. I have maintained my drive to improving my surrounding environment by continuing to develop SOPs, advising key decision makers on acquisition and proper employment of our SIGINT

and Electronic Warfare (EW) assets, and leading and mentoring soldiers. One of the projects for the 173rd I have spearheaded is a SCT specific Joint Qualification Standards (JQS) roadmap broken down into 5 modules, with the purpose of molding brand new SCT members into competent leaders. With this document, 173rd leaders can set measurable and attainable goals, identify training deficiencies within the teams, and have the resources to maintain the most competent and diversified SCT possible.

5. I served as the Company's Primary Equal Opportunity Leader for 2 years and filled other roles such as Digital Training Management System Master Trainer, Communication Security (COMSEC) Custodian, and Platoon Communication's Representative. As a testament to my commitment to physical and mental excellence, upon my arrival to the unit, I revamped my Platoon's Physical Training (PT) schedule to align better with the Army's updated Holistic Health & Fitness and the Total Soldier Concepts and planned, in detail, every PT session for 7 consecutive months. I additionally co-founded extracurricular clubs including the High Gains Radio Club and the Danger Company Cyber Security Council to further encourage the sharing of ideas and experience between my peers. My entire Army Career has been dedicated to serving those around me and the American people by improving the organizations in which I operate.

6. I have not been offered nor have I denied the Food and Drug Administration (FDA) approved coronavirus vaccine or a Biologics License Application (BLA) compliant vaccine. I have however, refused to volunteer to take the Emergency Use Authorized (EUA) Pfizer & BioNTech Vaccine. The Army implemented its mandatory vaccination policy with the implementation of the Army's Fragmentary Order (FRAGO) 5 to Executive Order (EXORD) 225-21 COVID-19 Steady State Operations. As carefully written in the

Order, military leaders are to ensure a supply of DoD approved vaccines to vaccinate servicemembers instead of the FDA approved vaccines. The Under Secretary of Defense has gone so far as to instruct the use of the EUA Pfizer & BioNTech Vaccine “as if the doses were the licensed vaccine” thus qualifying this EUA vaccine as Department of Defense (DoD) approved. All the while, the DoD has kept information about BLA compliant doses hidden from its servicemembers and instead perpetuates the narrative that the EUA vaccine is the FDA vaccine despite clear distinguishment by the manufactures (Pfizer & BioNTech) and the FDA. This means that any refusal of the EUA Pfizer & BioNTech’s vaccine is also, in the DoD’s eyes, a refusal of compliance with the Army EXORD and will be treat as such. Such treatment is evident in my personal case. The DoD has successfully created a situation in which the only way to comply with the SECDEF’s order is for servicemembers, knowingly or unknowingly, to forfeit their rights under Title 10 United States Code (USC) § 1107a to refuse an EUA Vaccine.

7. This circumvention of rights is further reinforced by a misinformation campaign the Department of Defense launched with the generation and distribution of Vaccine ‘Fact Sheets’ that are in clear violation of Title 21 Part 50 of the Code of Federal Regulations (CFR). These fact sheets make claims that the EUA vaccine is the FDA approved vaccine and asserts that they share the same FDA approval status. This is not consistent with information published by the manufacturers, FDA, and now the Federal Court (see case 3:21-cv-01211-AW-HTC). These ‘Fact Sheets’ are provided to servicemembers and have been used to deceive and coerce a countless number of servicemembers into waiving their rights. There was never a point that these ‘fact sheets’ should have been legally distributed, especially since the DoD acknowledges that there is a difference in court. This can be seen

in federal case 3:21-cv-01211-AW-HTC where the DoD's own defense concedes that the DoD has a supply of BLA vaccines, and that the DoD is using them. Every servicemember who was forced into the mandatory vaccination formations and coerced into COVID-19 vaccination should have received an accurate fact sheet and the BLA compliant vaccine in order to be in line with the Secretary of Defense's Order. Unfortunately, this is not the case.

8. For refusing the EUA vaccine and explicitly asking for the FDA approved vaccine, I have been categorized as a vaccine refusal and received adverse action by my command. I have meticulously documented my entire experience since my initial refusal of the EUA Vaccine on 17SEP21. I spoke with my Primary Care Manager, CPT Richard D. Palomino, on 27SEP21 and expressed my willingness to become vaccinated with the FDA approved vaccine. CPT Palomino, in writing, acknowledged that the vaccine being provided was not the FDA approved vaccine, made no mention of any BLA compliant doses, and denied my exemption request citing the Under SECDEF's Memorandum for doing so.

9. Despite expressing that I am willing to become vaccinated with an approved vaccine and requested assistance acquiring one, I have been negatively counseled by my Commander CPT Max Gustafson on 23SEP21, 24SEP21, 27SEP21, and 28SEP21 and flagged for adverse action on 29SEP21 for refusing a to become fully vaccinated, effectively barring me from both reenlistment and any favorable action to include awards, tuition assistance, and army schools. I received a General Officer Memorandum of Reprimand (GOMOR) from the USAG Commanding General, Major General Andrew Rohling on 04NOV21 and filed my rebuttal again reiterating my position on 09NOV21. Major General Rohling ordered the permanent placement of the GOMOR in my Army Military Human Resource Record on 19JAN22, which will have serious long-lasting

consequences for my army career. Showing his ignorance on the matter, my Brigade Commander, Colonel Michael Kloepper's, reason for recommending permanent filing of my GOMOR was that "Pfizer is an FDA authorized vaccine", which is my exact reasoning as to why I am requesting the FDA approved vaccine. According to the directive put out by the Secretary of the Army on 31JAN22, I will be involuntarily separated from the Army by 01 July 2022. My chain of command notified me on 21MAR22 that they are flagging me for involuntary separation processes for Severe Misconduct which means I can be served an Other Than Honorable (OTH) discharge. This would have a major impact on my VA benefits as well as add additional complications for my transition to civilian life.

10. My vaccination status has not prevented me from continuing to execute the mission of the 173rd IBCT(A). During the pandemic, I led a SIGINT team on an Army Contingency Response Force activation, led a Live Environment Training mission, graduated from the Advanced Leader's Course with a 3.8 GPA, led the first Army SCT ever to successfully conduct the Military Intelligence Training Strategy II certification in a field environment, maintained my Russian linguist proficiency scoring a 3 in reading and a 2+ in listening, and participated in several field rotations. From 29NOV21 to 25FEB22, I served as the NCOIC for the COVID-19 Testing Team for USAG Italy. This tasking required me to defer my holiday leave (indefinitely), serve during the height of the Omicron surge, and work in direct contact with COVID positive and other symptomatic patients. In January 2022, I had my airborne status removed over my command's concerns of contracting or spreading COVID on the bus and plane, while simultaneously being cleared to work directly with confirmed COVID positive and symptomatic patients in the Vicenza Medical Clinic. I have over 100 days of leave that I've accumulated by working through holidays and block leaves

to facilitate the 173rd IBC(A)'s mission, including the Garrison's Covid Testing tasking, and I risk losing all of it with involuntary separation. On 25FEB22, directly after being relieved from the COVID details, I immediately started working 7 days a week for 12 hours a day on the Russian mission serving as the night shift NCOIC, utilizing my skills as Russian linguist and SIGINT professional. I have been informed by my command during the counseling on 21MAR22, that I am to continue to work this mission while I am processed for involuntary separation, and I intend to do so.

11. I have done my utmost to solve this issue internally by using military channels. I have been denied a medical exemption as authorized under AR 40-562 for lack of vaccine supply through my Primary Medical Provider. I have used my chain of command all the way up to the USAG Commanding General, Major General Andrew Rohling. I have filed my concerns via the Army's Inspector General all the way up to Department of the Army Inspector General. While it could be argued that I have yet to exhaust all means of handling this issue within the Army, the fact of the matter is that my concerns have been ignored or I have been given rabbit holes to chase. My most recent attempt to obtain a temporary exemption was on 18MAR22 where I met with the Brigade Provider, Lieutenant Colonel Christopher Forster. However, with my GOMOR being filed permanently and my command initiating involuntary separation, my career has already been gravely affected and I am now out of time.

12. The military has been in desperate need of this injunctive relief since the mandate was released. The implementation of this mandate does not match the order that was given and is missing crucial safeguards to protect our servicemembers. Countless servicemembers are facing irreparable harm by being deceived and coerced into giving up

their rights thanks to illegal and inaccurate fact sheets and withheld information, grossly violating informed consent laws. The DoD acknowledges in court that there is a legal difference between the BLA-compliant doses and the EUA one while instructing that the EUA shot to be used ‘as if it was the licensed vaccine’. There is no process in place to ensure servicemembers are receiving the FDA or BLA compliant vaccines for mandatory vaccinations and those who ask for the FDA approved one are labeled as vaccine refusals. Without this injunction, I, a servicemember who has served honorably for 9 years, will be involuntarily separated for Serious Misconduct, all the while continually expressing willingness to comply with the lawful order and not being provided a means to do so. This injunction will not replace the stigma and adverse actions that I and others have faced by being labeled a vaccine refusal, but it will protect the rights of servicemembers now and in the future. My concern is for all the servicemembers who have been coerced into making a decision that they themselves were not comfortable with and the precedent of allowing such deceptive behavior to continue will have for our citizens. While failing to pass this injunction will result in my dismissal from the Army, my brothers and sisters in arms will be stuck with the precedent the DoD has set in place. Therefore, I make this declaration for injunction relief not for just myself, but for all my fellow servicemembers so that they may maintain the right to true and transparent informed consent when taking an EUA vaccine.

I declare under penalty of perjury, under the laws of the United States, that the foregoing statements are true and correct to the best of my knowledge.

Executed this March 24, 2022.

SSG Steven Brown